IN THE HIGH COURT OF JUDICATURE AT BOMBAY

CIVIL APPELLATE SIDE JURISDICTION

WRIT PETITION NO.2295 OF 2005

Janardan Dagdu Rane
and Ors. ..Petitioners

Vs.

Rambhau Pandurang Rane & Ors. ..Respondents

...

Mr.P.S.Dani for Petitioner

...

CORAM : B.H.MARLAPALLE,J.

DATE : APRIL 21,2005

P.C.:

1. By the impugned order passed by the learned Civil Judge J.D. on 24.3.2005 an application at Exh.13 filed in R.D No. 4 of 2001 has been rejected and attachment warrant was directed to be issued against the judgment-debtors under Order XXI Rule 43 of the CPC.

2. Mr.Dani, the learned counsel for the Petitioners submitted that original plaintiff Rambhau died on 3.8.1992 and his legal representatives were never brought on record till the suit was purportedly decreed on 3.12.1995 by way of compromise between the legal representatives of Rambhau and the defendant. He further states that this compromise reduced in

writing was signed by the legal representatives of Rambhau and the defendants. He therefore, raised the main question regarding the decree being valid decree in the eyes of law more so, when Rambhau's legal representatives were never brought on record. It appears that such an issue was not agitated in clear terms by application at Exh.13.

3. Therefore, the impugned order cannot be interfered with. However, the Petitioners may if so advised, file fresh application providing the better particulars pointing out that if there was no valid decree in the eyes of law, its execution could not be proceeded further.

4. The petition is rejected summarily. However, if a fresh application is submitted by the Petitioners within a period of two weeks from today, the same shall be considered without being influenced by any of the observations made in the impugned order dated 24.3.2005. The attachment warrant issued by the impugned order will stand suspended for a period of four weeks from today and the Petitioners may apply for extension beyond a period of four weeks before the trial Court, which may consider it on merits.

5. Certified copy expedited.

[B.H.MARLAPALLE,J.]